

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Review of the Missouri Public)
Service Commission's Standard of Conduct Rules) **Case No. AO-2008-0192**
and Conflicts of Interest Policies)

NOTICE REGARDING EXTERNAL COMMUNICATIONS
QUESTION REGARDING ACCESS TO TRANSCRIPT FROM
ROUNDTABLE DISCUSSION

Issue Date: January 9, 2008

On January 7, 2008, at approximately 11.15 a.m., during the Roundtable Discussion, the Regulatory Law Judge moderating for this workshop docket received an electronic mail message inquiry from Mr. Christopher Schappe regarding how to view the transcript in this docket. Immediately upon receiving the message, Judge Stearley responded that he would follow up with Mr. Schappe to provide that information.

On January 9, 2008, the official transcript in this matter was filed in the Commission's Electronic Filing and Information System ("EFIS"). At approximately 10:48 a.m. on that same day, Judge Stearley provided Mr. Schappe with instructions for accessing the docket and transcript. The e-mail exchange between Judge Stearley and Mr. Schappe is hereby filed in this case as an external contact.

To be clear, the proceeding that was held on Monday, January 7, 2008, was a Roundtable Discussion. To quote directly from the Notice of Clarification that was issued on December 19, 2007:

Additionally, the Chairman wishes to stress that this is not an adversarial proceeding. This is not a "contested case," meaning a proceeding before the agency in which legal rights, duties or privileges of specific parties are

required by law to be determined after hearing.¹ This is a workshop docket opened to receive input regarding the Commission's Standard of Conduct Rules, policies and practices and the Conflicts of Interest Statute.

Determination of contested cases involves the Commission's exercise of its judicial power. Workshop cases, such as these, do not constitute contested cases, even if they result in a determination that the Commission will engage in rulemaking. Rulemaking is an exercise of the Commission's legislative power.² In contrast to an adjudicatory, trial-type hearing in the nature of that in a contested case, workshop proceedings contemplate that the Commission, or this instance the Chairman, will meet interested members of the public face to face providing an opportunity for comments and presentations.³

Mr. Schappe's inquiry and Judge Stearley's response are not *ex parte* contacts because this is not a contested case and there are no adversarial parties to this workshop.⁴ However, in the interest of maintaining transparency throughout this docket, notice of this e-mail exchange is being filed in this matter.

BY THE COMMISSION



Colleen M. Dale
Secretary

Dated at Jefferson City, Missouri,
on this 9th day of January, 2008.
Stearley, Regulatory Law Judge

¹ Section 536.010(4), RSMo 2000.

² "The identifying badge of a modern administrative agency is the combination of judicial power (adjudication) with legislative power (rulemaking)." *McNeil-Terry v. Roling*, 142 S.W.3d 828, 835 (Mo. App. 2004).

³ *State ex rel. Atmos Energy Corp. v. Public Service Com'n of State*, 103 S.W.3d 753, 759-760 (Mo. banc 2003).

⁴ It should be noted that even if one were to stretch their imagination and refer to these contacts as being an *ex parte* contacts, which they are not, not all *ex parte* contacts are prohibited or inappropriate. Indeed, "[t]he mere opportunity to receive information outside the courtroom which has the potential to affect considerations in a case is no basis to require a judge [or commissioner] to disqualify himself." *VonSande v. VonSande*, 858 S.W.2d 233, 237 (Mo. App. 1993); *J & H Gibbar Const. Co., Inc. v. Adams*, 750 S.W.2d 580, 583 (Mo. App. 1988); *Berry v. Berry*, 654 S.W.2d 155, 159 (Mo. App. 1983). "If the record discloses an opportunity to obtain information that would disqualify the judge, it may also disclose facts that negate any reasonable question concerning the trial judge's impartiality." *Id.* **Communications relating only to procedural matters, absent any discussion of the merits of a case, especially in light of no suggestion to the contrary, serve to dispel any further question of impropriety. *Id.***